

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Manchester Professional Employees :
Association :

and :

City of Manchester Department :
of Highways :

Case No. M-0519

Decision No. 79008

APPEARANCES

MANCHESTER PROFESSIONAL EMPLOYEES ASSOCIATION:

Maurice H. Corriveau
Jeanne Jaskolka

CITY OF MANCHESTER, NEW HAMPSHIRE:

Charles Flowers, Esq., Assistant City Solicitor
Wilbur Jenkins, City Personnel Director

LOCAL 298 AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO:

Michael B. O'Shaughnessy, Esq., counsel
James C. Anderson, President
William J. McDonough, Executive Director

BACKGROUND

In June of 1978, a petition was filed with the Public Employee Labor Relations Board for the creation of two units within the Manchester Highway Department for employees alleged by the petition to be part of the supervisory structure of the Department of Highways (Block "A") and employees alleged to be part of the administrative and engineering structure of the Department of Highways (Block "B"). A total of 58 employees were in the two proposed units. At the time of the filing, employees of the Highway Department were represented by the American Federation of State, County and Municipal Employees Local 298 under a contract which dated to 1969 and had been "grandfathered" when RSA 273-A was passed. Subsequent to the filing, a new contract was entered into between the Union and the City of Manchester. The recognition clause for the Highway Department employees in that contract read as follows:

"1.3 HIGHWAY DEPARTMENT: Wherever used in this agreement, the word "employee" shall refer only to a person or persons actively and regularly engaged in the Department's work and currently enrolled on the regular payroll of the Department. The Department of Highways, City of Manchester, New Hampshire, hereby recognizes that the Union is the sole and exclusive representative of all employees of the Department of Highways, except the engineers, executives, temporary help and part time help, and all management or supervisory employees of the department who have authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, for the purpose of collective bargaining."

Hearings were held by the Public Employee Labor Relations Board on August 2, 1978 and at a pre-election conference on February 20, 1979 at which time various disputes concerning the membership covered by the Union contract and the proper composition of the bargaining units proposed were discussed. It became apparent at the pre-election conference on February 20, 1979 that the full Board needed to re-examine the factors involved in the dispute and a hearing was held on the proper composition of the bargaining units at the Board offices on May 2, 1979.

FINDINGS OF FACT

The Board finds that the recognition clause in the contract in existence between the City and Local 298 should be examined to see what employees of the Department are covered thereunder. An examination of that clause indicates that only those employees who are engineers or supervisors with actual authority in the area of employee relations and labor relations are excluded from the coverage under the Union contract by its terms which were agreed to by the City and the Union, the evidence at the hearing indicating that the Mayor of the City of Manchester and the City Solicitor of the City of Manchester were involved personally in the negotiation of the recognition clause. Such an examination indicates that, unlike in the past, Union membership has no relevance to the membership covered by the contract and therefore, Union membership, either past or present, is not considered by the Board to be relevant in rendering this decision on the composition of the Professional Unit.

After an examination of the composition of the coverage of the existing contract, an analysis of the positions sought to be included in the two proposed units must be made to indicate whether they are appropriate bargaining units, regardless of the positions of either party. It is the responsibility of the Public Employee Labor Relations Board to create units in conformance with the law and the positions of the parties or their agreements are not controlling.

Rather than restate in this decision all of the factors involved in the formulation of units, the Board commends to the parties the considerations in Board Decision 780007, Keene State College PAT Staff Association and University System of New Hampshire, Keene State College.

Turning to the specific findings of facts, the Board accepts the agreement of the parties that the following positions should be included in a supervisory unit and are not covered by the Union contract:

- Public Works General Superintendent
- Superintendents
- Chief Sanitary Engineer
- Sanitary Engineer
- Waste Water Treatment Chief Operator
- Waste Water Treatment Maintenance
- Mechanic Supervisor
- Business Service Officer
- Civil Engineers I, II and III

As to the positions on which there was no agreement, the Board has considered all of the evidence at the hearing and makes the following findings:

As to the Assistant Superintendents, the evidence indicated that they were new positions with supervisory responsibility who did have

some effect on the reviewing of and personnel decisions regarding other employees in the bargaining unit which presently exist. Although they were previously foreman, the evidence was that their foreman jobs had not been eliminated and in fact other people were presently filling them. The Board, therefore, finds that the Assistant Superintendents are also properly included in the proposed unit.

As to the Waste Water Treatment Plant Foremen, the Board finds that they are in essence foremen, who, although they have certain characteristics of supervisors, have no real authority in that regard and are covered by the Union contract and, therefore, are unavailable to be included in this bargaining unit.

Likewise, the Waste Water Treatment Chief Lab. Technician is not a Supervisor according to the evidence and is included in the Local 298 Unit and not in the proposed unit.

A Chief of Survey Party is similar to a foreman and covered by the existing contract and will not be included in the bargaining unit proposed.

The Accountants I and II have no real supervisory responsibility and therefore, are covered by the existing contract and will not be included in the proposed bargaining unit.

As to the Block B Unit, although the positions require sophisticated ability, that fact alone is not sufficient to make them members of a different unit. The fact that they are or are not on salary, do or do not supervise budgets or work of great value are not criteria for their exclusion from the existing unit by the terms defining that unit, and they are already included in it. Therefore, none of the proposed members of Block B will be put in a separate unit other than those Civil Engineers I, II and III who are already excluded from the pre-existing unit by agreement and by definition.

Therefore, the Board creates one separate unit comprised of those individuals listed above and directs that a pre-election conference and an election be held as expeditiously as possible.

All other positions not included in the new unit are covered by the pre-existing contract between Local 298 and the City of Manchester and shall henceforth be considered to be covered by that contract in all respects. So ordered.



Edward J. Haseltine, Chairman

Members Richard Cummings and Joseph Moriarty also present. All concurred. Board counsel Bradford Cook also present.

Signed this 11th day of May, 1979